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Since the third United Nations Convention on the Law of the Sea (UNCLOS) produced its seminal document in 1982, debate has ensued over whether ratification is in the best interest of the United States. Curiously, despite a preponderance of evidence to support ratification, and the backing of many high-ranking officials, some twenty-nine years later the United States remains a non-party to the convention. With an increased emphasis on multinational partnerships, this paper seeks to understand why the United States cedes international legitimacy by remaining outside UNCLOS, and proposes two areas where PACOM could leverage increased legitimacy to more effectively conduct shaping operations in the South China Sea.

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Time to Ratify UNCLOS; A New Twist on an Old Problem

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

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Abstract

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Since the third United Nations Convention on the Law of the Sea (UNCLOS) produced its seminal document in 1982, debate has ensued over whether ratification is in the best interest of the United States. Curiously, despite a preponderance of evidence to support ratification, and the backing of many high-ranking officials, some twenty-nine years later the United States remains a non-party to the convention. With an increased emphasis on multinational partnerships, this paper seeks to understand why the United States cedes international legitimacy by remaining outside UNCLOS, and proposes two areas where PACOM could leverage increased legitimacy to more effectively conduct shaping operations in the South China Sea.

Introduction

Nearly 7,000 years after man first took to the sea,[1] the maritime domain has become the linchpin of the world economy.[2] Today, the sea still offers an opportunity to expand borders, gather resources, and undertake unimpeded movement, and the extent of its use has risen sharply over the past century. Technology such as airplanes, telephones, and the Internet has flattened the world and increased reach, but the importance of the ocean has not diminished in the least. At present, shipping continues to move 90 percent of globally traded goods, and the oceans remain a major source of organic and inorganic resources.[3] Thus, control over the oceans has been a priority for every major world power since the age of sail, and it will retain a prominent place in the future.

Freedom of the seas and access to the maritime commons is almost entirely guaranteed by the United Nations Convention on the Law of the Sea (UNCLOS) negotiated in 1982.[4] Curiously, despite the United States position as a negotiator and major proponent of the convention we remain a non-party, choosing instead to follow the rules of the convention as a matter of customary international law.

Although opponents bring up several points against ratification addressed in later analysis, none present a compelling or legally sound argument. On the other side of the same coin, some argue that with no notable adverse affects after twenty-nine years outside the convention, little reason exists today to support ratification. The arguments submitted by both opponents and status quo advocates could not be more wrong.

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[1] Richard Weekes, "Secrets of world's oldest boat are discovered in Kuwait sands," Telegraph.co.uk, 1 April 2001, http://www.telegraph.co.uk/news/worldnews/middleeast/kuwait/1314980/Secrets-of-worlds-oldest-boat-are-discovered-in-Kuwait-sands.html (accessed 15 April 2011).
[2] Scott G. Borgerson, *The National Interest and the Law of the Sea,* Special Report No. 46 (New York, NY: Council on Foreign Relations, 2009), v.
[3] International Maritime Organization, "Introduction to IMO," http://www.imo.org/About/Pages/Default.aspx (accessed 12 March 2011).
[4] Borgerson, *The National Interest and the Law of the Sea,* xx.

The reality is that the increased legitimacy obtained through ratification of UNCLOS can be leveraged to enhance PACOM shaping operations in the South China Sea. Specifically, increased legitimacy would improve the legal standing of U.S. operations conducted under the Freedom of Navigation (FON) Program,[5] and break down barriers currently restricting recruitment to the Proliferation Security Initiative (PSI).[6,7] In both cases this could potentially reduce the operational requirements of the theater commander and result in increased multilateral maritime security cooperation.

Background – International Maritime Law

Although freedom of the seas as a concept has been in existence since the Dutch jurist Hugo Grotius first proposed it in 1625, a codified internationally recognized document providing a framework for ocean management and use did not exist until the third United Nations Convention on the Law of the Sea convened in 1973.[8] Growing out of a demand for more international, vice unilateral, control of territorial sovereignty, and U.S. / USSR concern over growing resource claims, the convention debated for nearly 10 years before producing its seminal document in 1982.[9]

Although the United States won nearly every concession fought for in the convention, and fully supported the newly defined legal boundaries of the oceans and airspace as depicted in figure 1, President Reagan felt that Part XI[10] and the associated issues surrounding deep-

[5] Borgerson, *The National Interest and the Law of the Sea,* 34.
[6] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths: United Nations Convention on the Law of the Sea," U.S. Navy JAG Web Site, http://www.jag.navy.mil/organization/documents/UNCLOSNatSecurityMyths.pdf (accessed 1 March 2011), 1.
[7] Borgerson, *The National Interest and the Law of the Sea,* 34.
[8] Ibid., 6-9.
[9] Ibid., 9-10.
[10] UNCLOS Part XI deals with seabed provisions and forms the basis for President Ronald Reagan's initial objections to UNCLOS ratification in 1981. Specific objections are noted in *President Ronald Reagan's Statement on United States Participation in the Third United Nations Conference on the Law of the Sea* dated January 29, 1982.

seabed mining and technology transfer were not in the best interest of the United States.[11] Therefore, until these issues were resolved, and the convention better reflected U.S. interests, the country would remain a non-party.[12] This has been taken out of context by many to mean President Reagan was against UNCLOS; which is untrue. In fact, "the rest of the treaty was considered so favorable to US interests that, in his 1983 Ocean Policy Statement, President Reagan ordered the government to abide by and exercise the rights accorded by the non-deep-seabed provisions of the Convention"[13] and that should the aforementioned provisions be corrected, that he would fully support ratification.[14]

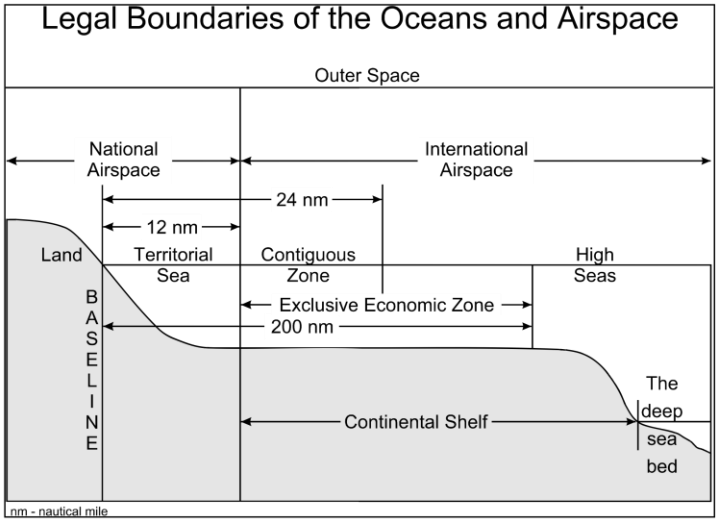

Figure 1.[15]

Through tough negotiation, and in the absence pressure from the USSR, in the ten years following the 1982 convention the United States was able to significantly modify Part XI of the convention to reflect more market-oriented policies on deep-seabed mining and

[11] Borgerson, *The National Interest and the Law of the Sea*, 11.
[12] Horace B. Robertson Jr., "The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession," *International Law Studies* 84 (September 2008): 118.
[13] William L. Schachte Jr., "The Unvarnished Truth: The Debate on the Law of the Sea Convention," *International Law Studies* 84 (September 2008): 131.
[14] Robertson, "The 1982 United Nations Convention," 114.
[15] Chief of Naval Operations, "The Commander's Handbook on the Law of Naval Operations," NWP 1-14M (Washington, DC: Department of the Navy, CNO, July 2007), 1-3.

amend every concern voiced by President Reagan.[16] President Bill Clinton forwarded the resulting 1994 Agreement on the Implementation of Part XI of the Convention on the Law of the Sea, along with the original 1982 convention, to the Senate on 7 October 1994 for ratification.[17] Unfortunately, this is where the convention still remains some 17 years later.

Despite hearings by the Senate Foreign Relations Committee (SFRC) in 2003 and 2004, the convention has still never been sent to the floor for a vote.[18] Reasons for this vary, but ultimately the core of the debate has centered on whether UNCLOS expands the rule of law or unnecessarily cedes U.S. sovereignty.[19] Therefore, many Politicians are unwilling to debate a contentious issue where immediate tangible benefits are difficult to define

Recurring Opposition Arguments

Barring one exception, to enter into a full legal analysis of UNCLOS and the 1994 Agreement is beyond the scope of this paper and would add little value to an area already thoroughly studied and debated by international and maritime legal scholars. There are, however, take-aways for the operational commander.

First, government officials and industry leaders have proven every opposition argument baseless through expert testimony during SFRC hearings and analysis documented in official reports and public discussion.[20] Second, and contrary to many of the myths surrounding UNCLOS, the convention in no way handcuffs military commanders executing national objectives. More specifically, UNCLOS imposes no limitations on the U.S. military's freedom of movement over, on, or below the sea.[21] In fact, it legally protects units

[16] Oxman, "Law of the Sea Forum," 695
[17] Borgerson, *The National Interest and the Law of the Sea*, 12.
[18] Ibid.
[19] Ibid., 17.
[20] Robertson, "The 1982 United Nations Convention," 116.
[21] U.S. Navy Judge Advocate General's Corps. "The Convention on the Law of the Sea." http://www.jag.navy.mil/organization/code_10_law_of_the_sea.htm (accessed 1 March 2011).

operating on the high seas or within another countries' contiguous zone / economic exclusion zone (EEZ) and guarantees specific transit rights that would actually restrict them.[22]

Furthermore, contrary to what vocal critics have maintained, secretary level Congressional testimony has shown that military survey, reconnaissance, and intelligence-gathering activities conducted by U.S. forces are in full compliance with all aspects of UNCLOS.[23,24] Additionally, opponent claims that UNCLOS undermines overseas contingency operations (formerly GWOT) and their associated maritime interdiction operations (MIO) are simply untrue.[25,26] As the above discussion clearly shows, UNCLOS does not cede any portion of U.S. sovereignty; but that begs the question, what advantages would the U.S. gain through ratification?

Proponents Viewpoint

Today, over 160 parties have ratified the convention and enjoy the provisions contained within the "most comprehensive treaty in existence after the UN charter."[27,28] Furthermore, as VCNO Walsh stated in 2007, "the Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of our Armed Forces." [29,30] Moreover, the Convention supports U.S. interests by creating stable maritime boundaries that prevent

[22] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths," 1.
[23] Borgerson, *The National Interest and the Law of the Sea*, 25.
[24] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths," 3.
[25] Ibid, 1.
[26] Schachte, "The Unvarnished Truth," 132.
[27] Guifang (Julia) Xue, "China and the Law of the Sea: A Sino-U.S. Maritime Cooperation Perspective," in *China, the United States, and 21st-century sea power: defining a maritime security partnership*, ed. Andrew S. Erickson et al. (Annapolis, MD: Naval Institute Press, 2010), 183.
[28] Kraska, "American Security and Law of the Sea," 270.
[29] Senate, *Statement of Admiral Patrick Walsh*, 3-4.
[30] These rights include the Right of Innocent Passage, the Right of Transit Passage, and the Right of Archipelagic Sealanes Passage.

coastal nation maritime zone expansion, or "jurisdictional creep," while still allowing for warship right of approach and visit.[31] In addition, UNCLOS "enjoys broad bi-partisan support including endorsement by both the two [three] previous presidential administrations; is championed by the Joint Chiefs of Staff and leading senators of both parties on the Senate Foreign Relations Committee; and has been recommended by every major ocean constituency."[32] With so many advantages inherent in accession, why then has the United States failed to ratify? Mainly because we have operated so successfully without it.

Status Quo

Rightly so, opponents point out that over the past 30 years the consequences of remaining a non-party have been negligible, especially with respect to national security.[33] Unfortunately, this in no way guarantees similar results in the future.

Although status quo advocates frequently acknowledge that the United States is already bound by the convention through customary international law and President Reagan's 1983 Ocean Policy, this isn't the same as being a party to the convention.[34] Furthermore, this is almost circular logic to show that the United States can exploit the convention's customary law status to receive protection while still operating as a non-party. Such is the case with submissions to the Commission on the Limits of the Continental Shelf (CLCS), economic security within the U.S. exclusive economic zone (EEZ), deep-seabed mining, and freedom of navigation on the high seas.[35]

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[31] U.S. Navy Judge Advocate General's Corps. "The Convention on the Law of the Sea." http://www.jag.navy.mil/organization/code_10_law_of_the_sea.htm (accessed 1 March 2011).
[32] Scott G. Borgerson and Thomas R. Pickering, *Climate Right for U.S. Joining Law of Sea Convention*, expert brief (New York, NY: Council on Foreign Relations, 23 July 2009), http://www.cfr.org/united-states/climate-right-us-joining-law-sea-convention/p21041 (accessed 26 March 2011), 165.
[33] Pedrozo, "Is it Time for the United States to Join," 165.
[34] Ibid, 156.
[35] Pedrozo, "Is it Time for the United States to Join,"

This practice, however, is a slippery slope because, "customary law does not provide the precision and detail of a written document. It may establish a principle, but its content may remain imprecise, subject to a range of interpretations."[36] Taking this a step beyond disagreement over interpretations, customary law can and will change and as the U.S. Navy Judge Advocate Corps (JAG) asserts, "relying on customary international law as the basis for…rights and freedoms is an unwise and unnecessary risk."[37]

It is not too late to accede to the convention, and unlike opponents and status quo advocates would have the public believe, there are still good reasons to take the next step and lock into the convention while conditions remain favorable to U.S. interests.

Legitimacy

Certainly ratification will place the United States on firm legal standing, but more importantly, ratification will add significantly to the legitimacy of U.S. operations conducted under the framework of UNCLOS. But does obtaining legitimacy carry enough weight to warrant ratification? And would ratification increase the legitimacy of U.S. action? Absolutely.

Through theory and practical application, legitimacy, like the other principles of war, has come to form the bedrock foundation by which joint operations are planned and conducted.[38] Legitimacy isn't, however, just "an other principle" of warfare that can be brushed aside when inconvenient. Instead, and rightfully so, legitimacy concerns often times drive commanders to operate within a multinational construct.[39] Thus, sustaining legitimacy is, and will remain, a priority for leaders at all levels of the military and must be included in

[36] Robertson, "The 1982 United Nations Convention," 118.
[37] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths," 1.
[38] JP 3-0, *Joint Operations*, II-1.
[39] Kemp, "Rights and Wrongs: Adopting Legitimacy," 44.

the planning and execution phases to ensure operations are viewed in a favorable light post implementation.[40]

Moreover, legitimacy is no longer an imperative solely for the politician or diplomat; that line has become hopelessly blurred.[41] Instead, legitimacy has become "a prime example of the nexus between politics and war."[42] In other words, it sends a clear message to the world that military actions match rhetoric with respect to the rule of law.[43] Furthermore, speaking to the issue of UNCLOS directly, legitimacy is the seam created when U.S. policy is to operate within international law, but not as part of it. Thus, legitimacy is not legality, although the law is certainly a component.[44] Clearly U.S. Freedom of Navigation and Proliferation Security Initiatives, both underwritten by UNCLOS provisions, are at least debatably legal under current practice but still they fail to achieve widespread international approval.

To define legitimacy, therefore, we must also take into account the rightness of actions and morality.[45] A full discussion on the morality of U.S. action is well beyond the scope of this paper, but on a global scale U.S. actions inarguably conform to international norms regardless the ensuing debate over correctness of action or physical implementation. In other words, they are morally justifiable. On the issue of rightness of action, however, the United States is at times viewed to be lacking. The international community understands that the United States will always push for actions favorable to U.S. terms,[46] because every nation

[40] Kemp, "Rights and Wrongs: Adopting Legitimacy," 44.
[41] Ibid., 43.
[42] Ibid., 1.
[43] Scott G. Borgerson, *The National Interest and the Law of the Sea*, 36.
[44] Hammond, "Legitimacy and Military Operations," 69.
[45] JP 3-0, *Joint Operations*, A-4.
[46] Tellis, *Strategic Asia 2008-2009*, 22-23.

makes decisions in that manner, but what erodes rightness of action is when the U.S. fails to match rhetoric and action.[47]

This is exactly the problem with the U.S. position on UNCLOS and the disconnect between stated intentions and the ultimate failure to ratify. As John B. Bellinger III points out, treaty partners "lose confidence in the ability of the United States to make good on its word when we negotiate and sign treaties but don't ultimately become party to them."[48] Specifically what Mr. Bellinger is referring to is the loss of U.S. credibility, or in other words the rightness of actions. Furthermore, because the United States is so successful at negotiating treaties, when representatives push hard for and are in turn granted changes within the document (as is the case with the 1994 agreement on implementation), but then ultimately fail to accede, it is very frustrating for the other nations involved.[49] Again, this erodes U.S credibility and in turn legitimacy of action. With this in mind, the U.S. Senate must take the earliest opportunity to harvest this "low hanging fruit" and free PACOM from a barrier that detracts from shaping operations in the South China Sea (SCS).[50]

Shaping

In order to be prepared to counter specific threats as they arise across the globe, operational commanders continuously conduct shaping activities in order to give U.S. forces the most favorable operating conditions across the spectrum of conflict. As defined by Joint Publication 3-0, shaping operations are intended to dissuade or deter adversaries, assure or solidify relationships, enhance international legitimacy, and gain multinational cooperation.[51]

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[47] Tellis, *Strategic Asia 2008-2009*, 22-23.
[48] Bellinger Interview, "The Trouble with START," 3.
[49] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths," 3.
[50] Borgerson, *The National Interest and the Law of the Sea*, 39.
[51] JP 3-0, *Joint Operations*, IV-27.

Therefore, collectively, shaping operations are arguably the most important activity undertaken within an area of responsibility (AOR).

In the PACOM AOR, this note rings especially true. With no major combat operations currently underway, the majority of operations conducted directly support shaping operations. Furthermore, strategic guidance put forth by ADM Robert F. Willard, Commander U.S. Pacific Forces, seeks to protect and defend U.S. interests in the region while promoting regional security and deterrence of aggression; all functions within or underpinned by the effectiveness of shaping operations.[52] Specifically, for the South China Sea this means maintaining forward presence, providing for extended deterrence, and concentrating on the focus areas of allies and partners, China, and transnational threats.[53] In every instance, the United Nations Convention on the Law of the sea and the 1994 Implementation Agreement support those objectives. In fact, for the South China Sea, Freedom of Navigation assertions and the Proliferation Security Initiative would benefit immediately.

Freedom of Navigation Assertions

When the Convention on the Law of the Sea came into effect in 1982 it sought to broadly codify and balance coastal state territorial and resource rights against the need for freedom of navigation by maritime nations.[54] Coastal state territorial seas were expanded, but only after acceptance of regimes for innocent and transit passage.[55] The same balance was struck when creating archipelagic lanes through island nations and allowing for high

[52] Robert F. Willard, "United States Pacific Command Strategic Guidance," http://www.pacom.mil/web/pacom_resources/pdf/PACOM%20Strategy%20Sep%202010.pdf Camp H.M. Smith, HI: United States Pacific Command, 2010, 1.
[53] Ibid.
[54] Borgerson, *The National Interest and the Law of the Sea*, 8.
[55] Stephens, "The Legal Efficacy," 239.

seas freedoms in the newly created Exclusive Economic Zone (EEZ) where coastal states now maintained resource rights.[56,57] This area of "shared rights and responsibilities," along with coastal nation propensity to "adopt excessively generous" baselines, has proven quite contentious for the United States as it seeks to maintain freedom of navigation and peacetime access around the globe.[58,59] Furthermore, coastal state interpretation of the convention in a manner most beneficial to self-interest creates major difficulties for the United States.

As a non-party to UNCLOS, the U.S. lacks "a seat at the table when the [160] parties to the Convention interpret (or try to amend)" the rights and freedoms protected within the convention, and forfeits the use of binding dispute resolution to counter coastal state encroachment.[60] Instead these freedoms negotiated in the convention, but either ignored or incorrectly interpreted, must be objected to through the U.S. Freedom of Navigation (FON) Program to keep customary international law from developing contrary to U.S. strategic interests.[61] Unfortunately, "that approach plays directly into the hands of those foreign coastal States that want to move beyond the Convention," because "they too cite customary international law as the basis for developing claims of coastal State sovereignty in the EEZ."[62]

Even though as the worlds most powerful Navy the United States has had very little difficulty asserting freedom of navigation around the world, it is becoming increasingly challenging given China's aggressive enforcement of legal interpretations in the South China Sea (SCS) that are inconsistent with international norms. This is particularly true with

[56] Stephens, "The Legal Efficacy," 239.
[57] Pedrozo, "Close Encounters at Sea," 102.
[58] Xue, "China and the Law of the Sea," 181.
[59] Stephens, "The Legal Efficacy," 239.
[60] U.S. Navy Judge Advocate General's Corps, "Eight National Security Myths," 1.
[61] Stephens, "The Legal Efficacy," 242.
[62] Senate, *Statement of Admiral Patrick Walsh*, 5-6.

respect to their EEZ, which China views as a "buffer zone for defense."[63] Furthermore, China considers any military or surveillance (electronic attack) activity "hostile" and in violation of "UNCLOS provisions that require maritime users to 'refrain from any threat or use of force' against coastal states."[64] One need only look at the 2001 EP-3 and 2009 Impeccable incidents off Hainan Island to see that the stakes are high for both sides,[65] but it doesn't need to be this way.

As mentioned previously, the enhanced legitimacy gained through ratification of UNCLOS would aid PACOM in several ways. First, legitimacy gives FON assertions and diplomatic protests more weight, and leaves nations such as China constrained in their ability to challenge U.S. action. Because UNCLOS is almost universally accepted, U.S. actions would receive "tacit support" from the 160 nations party to the convention allowing commanders to more aggressively assert navigational rights within the approved framework of UNCLOS should diplomacy fail.[66] In other words, after military capability, legitimacy is the second prong necessary to unilaterally conduct effective FON assertions in the SCS.

Unilateral action is always the last resort, and ratification of UNCLOS helps dramatically increase the legitimacy of U.S. FON assertions when viewed from a multinational vantage point. Rhetoric marching lock step with action will decrease PACOM difficulties convincing SCS nations that U.S. interests are not just self-serving. Although self interest plays a part, the externalities of the U.S. FON program help all coastal and maritime nations, especially those like the Philippines who do not have a strong blue water navy able

[63] Xue, "China and the Law of the Sea," 181.
[64] Peter A. Dutton, "Charting the Course: Sino-American Naval Cooperation to Enhance Governance and Security," in *China, the United States, and 21st-century sea power: defining a maritime security partnership*, ed. Andrew S. Erickson et al. (Annapolis, MD: Naval Institute Press, 2010), 211-212.
[65] Pedrozo, "Close Encounters at Sea."
[66] Borgerson, *The National Interest and the Law of the Sea*," 37.

to conduct these assertions on their own. Restated, ratification of the convention shows our allies and partners that we are committed to international law and a global "partnership of maritime nations sharing common goals and values."[67]

Additionally, legitimacy serves to underpin United States assertions that we are committed to the rule of law; critical if the U.S. hopes to achieve maritime security goals in the SCS. Looking closely at the EP-3 incident from 2001, notably absent is any real resolution of the underlying issues. Mainly the serious disconnect between Chinese and U.S. interpretations of UNCLOS provisions as related to military activities in the EEZ. Moreover, other than saber rattling by the U.S. and China, our closest allies in the region failed to lodge strong protests against this clear violation of UNCLOS. At best this shows other regional powers at least marginally acknowledge Chinese EEZ regulations, and at worst brings into question whether international powers fully believe U.S. actions are completely legitimate. Ratification eliminates that seam and the increased legitimacy gained helps U.S. allies come to our defense should similar issues arise in the future.

Finally, legitimacy is the key to future dialog with China over freedom of navigation in the SCS. UNCLOS already provides the framework for communication and resolution of varying interpretations of convention provisions. With an economy increasingly dependent on maritime freedom in the global commons, China may be receptive to multilateral dialog and change internal laws to better conform to the UNCLOS.[68] This would be a win-win for PACOM as it would significantly decrease the requirement for, and probability of

[67] Senate, *Statement of Admiral Patrick Walsh*, 7.
[68] Xue, "China and the Law of the Sea," 188.

miscalculation during, FON assertions. Moreover, dialog could lead to multilateral security cooperation activities with the PRC Navy, such as the Proliferation Security Initiative.[69]

Proliferation Security Initiative (PSI)

Launched in 2003, "the Proliferation Security Initiative (PSI) is a global effort that aims to stop trafficking of weapons of mass destruction (WMD)."[70] The PSI is not a treaty, but instead relies on preexisting international legal frameworks – including the Law of the Sea Convention – and voluntary commitment to a "Statement of Interdiction Principles" to guide cooperation and prevent proliferation.[71,72] Despite the endorsement of ninety-eight nations, major players have proved wary to join the United States in this partnership.[73,74,75]

Conspicuously absent from PSI are both Indonesia and Malaysia who both border the worlds busiest maritime straight. With nearly 525 million metric tons traveling this corridor annually, the failure to expand PSI to this SLOC puts international interdiction efforts at a significant disadvantage and complicates an already difficult problem in the PACOM AOR.[76] This failure to expand PSI should come as no surprise, however. As former Vice Chief of Naval Operations Admiral Walsh testified to in 2007, many critical Pacific countries would like to support PSI, but are unable to "convince their legislatures that PSI interdiction activities will only occur in accordance with international law, including the Law of the Sea

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[69] Dutton, "Charting the Course," 223.
[70] U.S. Department of State, "Proliferation Security Initiative," http://www.state.gov/t/isn/c10390.htm (accessed 20 April 2011).
[71] Mary Beth Nikitin, *Proliferation Security Initiative*, CRS Report RL34327 (Washington, DC: Congressional Research Service, 2011), http://www.fas.org/sgp/crs/nuke/RL34327.pdf (accessed 20 April 2011), i.
[72] Senate, *Statement of Admiral Patrick Walsh*, 8.
[73] U.S. Department of State, "Proliferation Security Initiative," http://www.state.gov/t/isn/c10390.htm (accessed 20 April 2011).
[74] Borgerson, *The National Interest and the Law of the Sea*, 34.
[75] STRATCOM Center for Combating WMD, "PSI Support Cell Factsheet," United States Strategic Command, http://www.stratcom.mil/factsheets/Proliferation_Security_Initiative_Support_Cell/printable/ (accessed 11 March 2011).
[76] Joshua H. Ho, "Sotheast Asian SLOC Security," in *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, ed. Shicun Wu et al. (Burlington, VT: Ashgate, 2009). 158.

Convention, when the leading PSI nation, the United States, refuse to become a party to the Convention."[77] The legitimacy obtained through ratification of UNCLOS would solve this problem immediately. Recruiting countries to PSI is just the first step, however, as enhanced legitimacy has second-order effects.

Transnational threats are an issue for all nations in the SCS, and although PSI forms a framework for WMD interdiction, more critically it creates a venue for multinational cooperation, a critical PACOM function. To date 40 PSI exercises have taken place, all directly supporting the PACOM Theater Security Cooperation Plan.[78] Moreover, these exercises aren't just a check in the box for the U.S., or another tick on a chart to show international support. Exercise DEEP SABRE II conducted in 2009 by Singapore, for example, was incredibly successful with 19 major maritime nations participating.[79] Furthermore, these exercises build partnership capacity that can be leveraged in the future.[80] As the U.S. Maritime strategy states: "No one nation has the resources required to provide the safety and security throughout the entire maritime domain,"[81]and ultimately legitimacy must underpin that philosophy.

Conclusion

With shrinking budgets, soft power and multinational cooperation are slowly replacing unilateral military action as the cornerstone of U.S. policy, and neither can be effective as long as the United States remains a non-party to the convention. Ratification would formally bind the United States to the international legal framework of UNCLOS, and

[77] Senate, *Statement of Admiral Patrick Walsh*, 9.
[78] STRATCOM Center for Combating WMD, "PSI Support Cell Factsheet," United States Strategic Command, http://www.stratcom.mil/factsheets/Proliferation_Security_Initiative_Support_Cell/printable/ (accessed 11 March 2011).
[79] Seth Clarke, "U.S., Australian Boarding Teams Conduct Joint Training for Deep Sabre II," Navy.mil, 30 October 2009. http://www.navy.mil/search/display.asp?story_id=49337 (accessed 23 April 2011).
[80] STRATCOM Center for Combating WMD, "PSI Support Cell Factsheet."
[81] U.S. Department of Defense, *A Cooperative Strategy for 21st Century Sea Power*, 4.

reinforce U.S. commitment to multinational solutions.[82] In turn, this could translate into greater security cooperation through outlets such as the Proliferation Security Initiative, provide firm legal grounding for U.S. forces conducting Freedom of Navigation Assertions, and serve as a springboard for broader policy initiatives in the region.[83]

With the rising importance of the world's oceans for both commerce and maritime security, it is astounding to think that the United States has chosen to remain a non-party to a nearly universally accepted international treaty. Even though U.S. operations will undoubtedly continue outside the convention in the near term, failing to eventually ratify UNCLOS and intentionally forfeiting the advantages discussed above is a shortsighted strategy. This hurts the nation, and more importantly the commanders executing U.S. policy. After twenty-nine years, isn't it time to finally stop handcuffing our military leaders?

[82] Borgerson, *The National Interest and the Law of the Sea*, 38.
[83] Ibid., p. 36.

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